IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.20 OF 2004

Surji Kuwarji Gala ...Applicant

Versus

State of Maharashtra

(ACB, Mumbai) ...Respondent

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Mr.Girish Kulkarni for Applicant.

Ms.P.H.Kantharia, A.P.P. for Respondent.

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CORAM: A.M.KHANWILKAR, J.

MARCH 10, 2005.

P.C.

1. Heard Counsel for the parties. Perused the record.

2. This Application takes exception to the order passed by the lower Court in rejecting the Application for discharge. The order is assailed on the argument that the lower Court has observed that necessary material about the modus operandi can be revealed in the evidence in trial, which cannot be the basis to reject the discharge

Application. It is argued that the Apex Court has deprecated such approach adopted by the subordinate Courts in respect of discharge Application. To buttress this argument, reliance is placed on the decision of the Apex Court reported in **AIR 1998 SC 3182 in the case of Suresh Budharmal Kalani alias Pappu Kalani v. State of Maharashtra**.

3. Indeed, the Court below has made that observation, but the same will have to be considered in the context in which it has been made. My understanding of the order, however, is that, the Court has in the first place adverted to the relevant material, which indicates the complicity of the Applicant in the commission of the crime. It is on that reasoning, the Court has rejected the Application. While parting, further observation is made that events about the increase in the area and the modus operandi will be revealed in the evidence and trial, but that is not the sole basis on which the order is founded.

4. To reassure myself, I have seen the relevant records pertaining to the Applicant

produced before me. There is material to indicate that the process of re-measurement commenced on the Application, which was made, for and on behalf of M/s.Blue Diamond Construction Company under the signature of the Applicant. In that sense, the Applicant pursued the matter regarding re-measurement, which eventually resulted in certification of increase of the actual area of the plot. This is the specific charge against the Applicant, as can be seen from the F.I.R. filed by the Investigating Officer. It is mentioned that the fact remains that the said Application preferred by the Applicant for re-measurement was submitted by the Applicant on behalf of the M/s.Blue Diamond Construction Company, though, he was not the partner of the firm. It is also mentioned in the F.I.R. that the Applicant was Power of Attorney Holder of the original landlady Monica Miranda from 27th July 1978 till 31st August 1979 and thereafter, the property was conveyed in favour of M/s.Blue Diamond Construction Company, which was constituted by none other than the sons of the Applicant.

5. The prosecution case, therefore, is that the Applicant has played active role in the conspiracy by applying for re-measurement and eventually, the Company succeeded in getting Certificate to show that the land was in excess by 79 square metres. The case made out in the F.I.R. against the Applicant is supported by the documents on record. In that sense, it is not a case of no evidence to support the charge, for which, the Applicant is being tried. Neither it is a case where it is possible to take the view that even if the documents are taken at their face values, no offence is made out.

6. Hence, no fault can be found with the conclusion reached by the lower Court in rejecting the discharge Application as preferred by the present Applicant. Hence, dismissed.

A.M.KHANWILKAR, J.